

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
MCC Missouri LLC)	CSR 6722-E
)	
Mediacom Southeast LLC)	CSR 6828-E, 6830-E
)	
Three Petitions for Determination of Effective)	
Competition in Seven Local Franchise Areas in)	
Missouri)	

MEMORANDUM OPINION AND ORDER

Adopted: October 28, 2005

Released: October 31, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers three petitions that cable operators, MCC Missouri LLC (“MCC”) and Mediacom Southeast LLC (“Mediacom; collectively, the “Cable Operators”), have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules¹ for a determination that such operators are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended (“Communications Act”),² and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l)(1) of the Communications Act⁴ and Section 76.905 of the Commission’s rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶

¹ 47 C.F.R. §§ 76.7, 76.905 (b)(1, 2), 76.907.

² 47 U.S.C. § 543(a)(2).

³ 47 C.F.R. § 76.906.

⁴ 47 U.S.C. § 543(l)(1).

⁵ 47 C.F.R. § 76.905.

⁶ See 47 C.F.R. §§ 76.906-07(b).

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPDs") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁷ Turning to the first prong of this test, the direct broadcast satellite ("DBS") service of DirecTV, Inc. ("DirecTV"), and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁸ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁹ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including at least one non-broadcast channel.¹⁰ We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.¹¹ The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing subscriber tracking reports that identified the number of subscribers attributable to the DBS providers within the Communities on a nine-digit zip code basis.¹² Mediacom asserts that it is the largest MVPD in the Communities of Diamond, Goodman, Granby, and Sarcoxie because its subscribership exceeds the aggregate DBS subscribership for each of those franchise areas.¹³ In these Communities, the DBS providers DirecTV and DISH have a combined subscribership of 26.02 percent in Diamond, 23.35 percent in Goodman, 28.12 percent in Granby, and 22.72 percent in Sarcoxie.¹⁴ Based on this record, we

⁷ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁸ *See Bright House Networks, LLC*, DA-05-2511 at ¶ 3 (rel. Sept. 27, 2005).

⁹ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2792-93 (2005) ¶¶ 54-55.

¹⁰ *See* 47 C.F.R. § 76.905(g).

¹¹ *See supra* n.7.

¹² MCC Petition CSR 6722-E at 7 & Exhibits E & F (about the unincorporated areas within Boone County, Missouri ('unincorporated Boone')); Mediacom Petition CSR-6828-E at 7 & Exhibits E & F. We have found the nine-digit (or "Zip+4") method of determining DBS subscribers within a franchise area to be reasonable and sufficiently reliable for purposes of determining the presence of effective competition. *Adelphia Cable Commn.*, 20 FCC Rcd 4979, 4982 (2005) ¶ 10; *Mediacom Minnesota LLC*, 20 FCC Rcd 4984, 4987 (2005) ¶ 7.

¹³ Mediacom Petition CSR-6828-E at 6.

¹⁴ *Id.* at 7.

find that Mediacom has demonstrated that in each of these Communities the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households there. Therefore, the second prong of the competing provider test is satisfied in Diamond, Goodman, Granby, and Sarcoxie.

5. It is not certain which company is the largest MVPD in Archie.¹⁵ In Archie, Mediacom has a subscribership of 23.06 percent and the DBS providers DirecTV and DISH have combined subscribership of 50.28 percent.¹⁶ If Mediacom is the largest MVPD in Archie, then the aggregate DBS subscribership surpasses the 15 percent subscribership threshold. Or, if one of the DBS providers is the largest MVPD, then Mediacom's own subscribership rate surpasses the 15 percent threshold of the second prong of the competing provider test. Based on this record, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in Archie. Therefore, the second prong of the competing provider test is satisfied in Archie.

6. In unincorporated Boone and Newtonia, the Cable Operator has subscribership of less than 15 percent,¹⁷ which makes it impossible to determine with certainty whether the second prong of the competing provider test is satisfied there. We need not speculate whether, despite these shortcomings, the second prong of the competing operator test is satisfied in these two communities, however, because we conclude below that the low penetration effective competition test is satisfied in both of them.

7. Based on the foregoing, we conclude that Mediacom in Diamond, Goodman, Granby, Sarcoxie, and Archie has submitted sufficient evidence demonstrating that its cable systems serving those Communities are subject to competing provider effective competition. Data underlying our conclusions under the competing provider test is set forth in Attachment A.I.

B. Low Penetration Effective Competition

8. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system."¹⁸ MCC has provided data showing that less than 30 percent of the households in its unincorporated Boone franchise area subscribe to its cable services,¹⁹ and Mediacom has provided data making the same showing for its Newtonia and Archie franchise areas.²⁰ Accordingly, we conclude that the Cable Operators have demonstrated the existence of low penetration effective competition under our rules for unincorporated Boone, Newtonia, and Archie. Data underlying our conclusions under the low penetration test is set forth in Attachment A.II.

¹⁵ See Mediacom Petition CSR-6830-E at 6.

¹⁶ Mediacom Petition CDR-6830-E at 6. Mediacom calculates its subscribership at 23.08% but, by our calculations, its 83 residential subscribers amount to 23.06% of 360 occupied households. *Id.* at 7.

¹⁷ See MCC Petition CSR-6722-E at 6-7 (in unincorporated Boone, 19,405 households and 2,884 MCC residential subscribers yields an MCC subscribership of 14.86%); Mediacom Petition CSR-6828-E at 7 (in Newtonia, 89 households and 7 Mediacom residential subscribers yields a Mediacom subscribership of 7.87%).

¹⁸ 47 U.S.C. § 543(l)(1)(A).

¹⁹ MCC Petition CSR 6722-E at 7-8 (14.86% cable subscribership).

²⁰ Mediacom Petition CSR-6828-E at 7-8 (7.86% cable subscribership in Newtonia); Mediacom Petition CSR-6830-E at 8 (23.06% cable subscribership in Archie).

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petitions filed by MCC Missouri LLC and Mediacom Southeast LLC for a determination of effective competition in the communities listed on Attachment A **ARE GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

11. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

²¹ 47 C.F.R. § 0.283.

Attachment A

I. Cable Operators Subject to Competing Provider Effective Competition

Mediacom Southeast LLC: CSR 6828-E

Community	CUID	CPR*	2000 Census Households+	DBS Subscribers+
Diamond	MO0539	26.02%	319	83
Goodman	MO0295	23.35%	454	106
Granby	MO0394	28.12%	850	239
Sarcoxie	MO0477	22.72%	559	127

Mediacom Southeast LLC: CSR 6830-E

Community	CUID	CPR*	2000 Census Households+	DBS Subscribers+
Archie	MO0601	50.28%	360	181

In two Communities in which competing provider effective competition is impossible to determine with certainty, DBS subscribership is as follows: in unincorporated Boone, 32.89%; in Newtonia, 19.1%.

II. Cable Operators Subject to Low Penetration Effective Competition

MCC Missouri LLC: CSR-6722-E

Community	CUID	Cable Subscribership+	2000 Census Households+	Cable Subscribers+
Unincorporated Boone	MO0156	14.86%	19405	2884

Mediacom Southeast LLC: CSR 6828-E

Community	CUID	Cable Subscribership+	2000 Census Households+	Cable Subscribers+
Newtonia	MO1122	7.87%	89	7

Mediacom Southeast LLC: CSR 6830-E

Communities	CUID	Cable Subscribership	2000 Census Households+	Cable Subscribers+
Archie	MO0601	23.06%	360	83

CPR = Percent DBS penetration or subscribership

+ = See Cable Operator Petitions